

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Petition of)	
)	
Petition for Rulemaking of)	
Fibertech Networks, LLC)	RM-11303
)	

REPLY OF T-MOBILE USA, INC.

I. INTRODUCTION

T-Mobile USA, Inc. ("T-Mobile") joins with a number of the commenting parties to support the grant of Fibertech Networks LLC's ("Fibertech") Petition for Rulemaking ("Petition")¹ and the initiation of a rulemaking proceeding to revise the Commission's pole attachment rules.² As Fibertech correctly recognizes, Congress twice emphasized that non-discriminatory access to poles and conduits is central to providing the public with competitive telecommunications and cable offerings. The Commission implemented this statutory mandate in the context of the Telecommunications Act of 1996 by adopting a general regulatory framework. At the same time, the Commission committed to monitor that approach and "propose more specific rules at a later date if reasonably necessary to facilitate access and the development of competition in telecommunications and cable services."³ The records compiled in response to this Petition, as well as the petition recently filed by the United States Telecom

¹ *Pleading Cycle Established for Petition for Rulemaking of Fibertech Networks, LLC*, Public Notice, DA 05-3182 (released December 14, 2005); *In the Matter of Fibertech Networks, LLC, Petition for Rulemaking*, Order, RM-11303 (adopted January 10, 2006 by Chief, Competition Policy Division).

² 47 C.F.R. § 1.1401 *et. seq.*

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 at 16068(1996).

Association,⁴ provide ample support for the need to fully explore adoption of several key access guidelines. Accordingly, T-Mobile urges the Commission to:

- Clarify that if a utility allows an attaching entity to construct excess capacity, including replacement of a utility pole, the utility must grant all such requests made by telecommunications and cable providers.
- Require each electric utility to provide interested telecommunications and cable providers seeking access a map certifying the location of all facilities allocated, in whole or in part, to local distribution.
- Make explicit in the rules that wireless telecommunications carriers are presumed subject to the telecommunications rate formula
- Amend the telecommunications rate formula to include a specific formula to calculate the space factor for wireless attachments.
- Integrate make-ready and survey work into a single procedural milestone with the deadline for providing access linked to the size of the project. Because CMRS projects involve the smallest number of poles, access should be provided by the earliest regulatory deadline: 30 days from the date of the utility receiving a complete application, as the Petition proposes.
- Require each utility to post on its Internet site a compliant pole and conduit access agreement together with an explanation of the process for obtaining access, including any other necessary forms and applications.
- Require the utility to provide an itemized statement of charges in advance of performing make-ready work, surveys and other functions associated with access to poles. The utility must demonstrate in the statement that all charges are cost-based.
- Require each utility to maintain a public list of at least three approved contractors that can be hired by telecommunications or cable service providers to perform make-ready and survey work.⁵

⁴ *In the Matter of the Petition of the United States Telecom Association for a Rulemaking to Amend Pole Attachment Rate Regulation and Complaint Procedures*, Public Notice, Report No. 2737, RM-11293 (released November 2, 2005). T-Mobile encourages the Commission to adopt a Notice of Proposed Rulemaking that consolidates the records of RM-11293 and RM-11303. The record of RM-11293 provides significant factual support for discriminatory attachment practices of electric utilities, an issue that also must be addressed in the context of revising the pole attachment rules. The United States Telecom Association is the only party to oppose consolidation, but it provides no support for that position other than the conclusory statement that "[t]he two Petitions are entirely different in character." United States Telecom Association Comments at 6.

⁵ Because Fibertech operates as a fiber-based CLEC in metropolitan areas, a number of the proposals in its Petition are not relevant to a CMRS provider such as T-Mobile, and therefore are not specifically addressed in this Reply. T-Mobile is, however, supportive of initiating a rulemaking that gives comprehensive treatment to all the issues raised by the Petition.

T-Mobile believes that the public interest in broadening availability of competitive telecommunications options would be served by adoption of rules targeting those junctures in the negotiation process where, time and again, impasses occur. Providing more specific guidance for resolving the most commonly disputed issues should lend new efficiencies to the negotiation process as well as the FCC's resolution of pole attachment disputes.

II. THE COMMISSION SHOULD STRENGTHEN DISINCENTIVES FOR UTILITIES TO DISCRIMINATE IN PROVIDING ACCESS.

T-Mobile is one of four facilities-based nationwide wireless carriers, operating a GSM/GPRS/EDGE/WiFi network that covers over 500,000 square miles and reaches 275 million pops. With approximately 33,000 total cell sites, T-Mobile is the fastest growing wireless carrier, earning national recognition for quality of service and customer satisfaction.

In the vigorously competitive CMRS market, there is high consumer demand for quality service, coverage, and expanded features in residential neighborhoods. But deploying wireless networks in these neighborhoods presents a number of challenges. Local zoning ordinances make siting building- and tower-mounted wireless antennae increasingly difficult. As a result, access to poles is sometimes T-Mobile's only option for achieving reliable "last mile" coverage needed to meet consumer expectations and public safety mandates.⁶ The need for reliable pole access will only increase as T-Mobile focuses on deployment of advanced wireless services. As aptly stated by AT&T, nondiscriminatory access to poles and conduits is essential to the

⁶Recognizing that wireless plays a critical role in public safety, the Commission also imposes and enforces wireless E-911 regulations that are performance-based. As explained in T-Mobile's December 19, 2005 Reply to the United States Telecom Association's Petition for a Rulemaking to Amend Pole Attachments Rate Regulation and Complaint Procedures, hereby incorporated by reference, first responders are also positioning themselves to rely on availability of wireless priority access to communicate effectively during emergencies. T-Mobile was the first national carrier to work with the Department of Homeland Security on providing wireless priority access.

functioning of a competitive telecommunications marketplace.⁷ Any uncertainty in timing or cost of access to infrastructure discourages investment and risks depriving the public of new and advanced services. Absent the ability to engage in reasoned deployment planning, a customer base cannot grow. Despite these challenges, T-Mobile has a history of vigorously competing to increase service to the public. T-Mobile's commitment to service continues to expand as T-Mobile transitions to providing the advanced wireless services that are making affordable broadband a reality for millions of consumers.

A. Utilities that Agree to Expand Pole Capacity to Accommodate An Attaching Entity Cannot Refuse to Do the Same for Other Telecommunications Providers.

T-Mobile routinely requests access to utility poles that may lack the capacity or structural integrity to support wireless telecommunications facilities. Under those circumstances, T-Mobile offers to pay the cost of purchasing and setting a new utility pole. Nonetheless, it is common for utilities to refuse T-Mobile's offer, or allow T-Mobile to set the pole but then refuse to charge T-Mobile the telecom rate for the space it occupies on the pole. Both results effectively preclude T-Mobile from reasonable and non-discriminatory access to the utility pole.

T-Mobile recognizes that Section 224(f)(2) entitles utilities to refuse access where there is insufficient capacity. A utility's right of refusal, however, is not unconditional. Section 224(f)(2) of the Communications Act states that "a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way *on a non-discriminatory basis* where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." (emphasis added). In

⁷ Comments of AT&T Inc. at 3. AT&T supports initiation of a rulemaking but asks that the Commission refrain from tentative conclusions about any of its proposals.

Southern Company v. FCC,⁸ ("*Southern I*") the United States Court of Appeals for the 11th Circuit struck down an FCC requirement that utilities take all reasonable steps to expand capacity. In that case, the FCC ordered utilities to treat requests for attachment that require expanded capacity just as the utility would handle its own needs for expanded capacity. The Commission requirement was based on the assumption that the statutory language to handle expansion requests "on a non-discriminatory basis" was intended to prevent the utility from favoring its own needs for additional capacity over those of a cable or telecommunications provider seeking pole attachments.⁹ The court found the FCC's position "contrary to the plain language of Section 224(f)(2)" because it would require utilities to expand capacity at the request of third parties. But the issue of how to appropriately apply the statutory language, "on a non-discriminatory basis," to the exceptions to mandatory access remains unresolved.

In light of the *Southern I* decision, the only reasonable interpretation of the language qualifying the exceptions to mandatory access is to compare how electric utilities treat requests to expand capacity from different attaching entities. Therefore, if an electric utility agrees to allow an attaching entity to build a utility pole to create excess capacity, the electric utility cannot refuse the same request if it is made by T-Mobile. Simply put, the electric utility cannot discriminate in consenting to provide excess capacity by favoring one attaching entity over another. Whether an ILEC or T-Mobile changes out a pole, the utility receives an identical end result: a stronger and/or taller new pole at no cost to the utility, plus increased revenue from leasing the additional pole capacity.

Finally, T-Mobile seeks an explicit presumption stating that if agreement is reached on setting a new pole to expand capacity at a particular site, that does not relieve a utility of its

⁸ 293 F.3d 1338 (11th Cir. 2002) ("*Southern I*").

⁹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Obligations*, Order on Reconsideration, 14 FCC Rcd. 18049, ¶51 (1999).

obligation to make access available pursuant to just and reasonable rates, terms and conditions.

The telecommunications formula governs T-Mobile's access to the new pole, and attachment fees must be equitably shared among all attaching entities.

B. Electric Utilities Should Be Required to Identify Facilities Allocated to Local Distribution.

The fact that electric utilities own the majority of poles nationwide is beyond dispute.¹⁰ *Southern I* held that the Commission's jurisdiction under Section 224(f)(1) of the Communications Act to mandate access covers all local distribution facilities "regardless of whether they are used in part for transmission wires or other transmission facilities."¹¹ It is not, however, readily apparent which utility facilities are potentially available for attachment.

For cost-recovery purposes, utilities must allocate facilities to local, interstate, or mixed jurisdiction. State public utility and Federal Energy Regulatory Commission ("FERC") regulations and orders govern each utility's allocation practices. The public interest in expanding availability of service offerings would be promoted by providing telecommunications and cable service providers with ready access to information identifying all utility facilities allocated in whole or part to local distribution. Having a comprehensive grasp of all attachment options within a service area will enable wireless carriers and other attaching entities to identify optimal strategies for enhancing service quality, coverage, and functionalities.

T-Mobile proposes that the Commission require each utility to provide a map showing the location of all facilities allocated, in whole or in part, to local distribution. In doing so, the

¹⁰ See, *In the Matter of the Petition of the United States Telecom Association for a Rulemaking to Amend Pole Attachment Rate Regulation and Complaint Procedures*, Public Notice, Report No. 2737 (released November 2, 2005); *Joint Opposition of American Electric Power Service Corporation, Duke Energy Corporation and Xcel Energy Inc.* at 19; *Bell South Corporation Comments* at 4 ("Bell South"); and *Opposition of First Energy Corporation* at 4.

¹¹ *Southern I* at 1345-1346.

utility would certify that these facilities are used for local distribution, consistent with FERC and the relevant state public utility commission determinations of the jurisdictional allocations in effect for the particular utility, including the seven-factor jurisdictional test adopted in FERC Order 888.¹²

T-Mobile further observes that a little more than a year ago, the Commission adopted rules authorizing use of the local distribution grid for providing broadband over powerline (BPL).¹³ The Commission coordinated its BPL proceeding closely with FERC in recognition of the fact that while today's BPL technologies do not use transmission facilities, the technology could evolve in that direction. As FERC and the Commission continue to monitor the development of BPL, T-Mobile recommends that the agencies jointly exercise jurisdiction to reserve for future consideration the ability to address the competitive implications of a transmission facilities-based BPL offering.

II. EXPERIENCE WITH OPERATION OF THE CURRENT RULES DEMONSTRATES THE NEED FOR SPECIFIC LANGUAGE ADDRESSING WIRELESS TELECOMMUNICATIONS ATTACHMENTS, INCLUDING A WIRELESS-SPECIFIC RATE FORMULA.

At this point, it is beyond dispute that wireless carriers are defined as telecommunications carriers under Section 224 of the Communications Act and § 1.1402(h) of the Commission's Rules. The Commission¹⁴ as well as the courts¹⁵ have reiterated that utilities have an obligation

¹² See *promoting Wholesale Competition Through Open Access to Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,0036 at 31,783-84 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 at 30,336 (1997), *order on reh'g*, Order No. 888-B, 81 FERC Stats & Regs. ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC Stats. & Regs. ¶ 61,046 (1998), *aff'd sub nom, New York v. FERC*, 535 U.S. 1 (2002). ("Order No. 888").¶

¹³ *Amendment of Part 15 Regarding New Requirements and Measurement Guidelines For Access Broadband Over Power Line Systems*, Report and Order, 19 FCC Rcd 21265 (2005),

¹⁴ See, e.g., *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777,6798-99 (1998); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Order on Reconsideration, 14 FCC Rcd 18049 (1999).

to grant wireless telecommunications providers access to utility poles at rates prescribed by the telecommunications rate formula.¹⁶ T-Mobile and its affiliates have availed themselves of the Commission's pole attachment complaint process.¹⁷ The Wireless Telecommunications Bureau has even reminded utility pole owners that "...section 224 and the Commission's rules do not allow pole access fees to be levied against wireless carriers in addition to the statutory pole rental rate, which is based on the space occupied by the attachment and the number of attaching entities on the pole, together with reasonable make-ready fees. Such overcharges or denial of access for wireless pole attachments may have serious anticompetitive effects on telecommunications competition."¹⁸ Nonetheless, utilities continue to unreasonably deny access or extract excessive fees based on the misperception that a CMRS provider is not a telecommunications carrier subject to the telecommunications rate formula.

The Commission initially declined to adopt pole attachment rules specific to wireless telecommunications services, finding that the telecommunications rate formula is the applicable default formula, with facts specific to each attachment serving to rebut the presumption in particular cases.¹⁹ After nearly ten years, there is an evident need to clarify the status of wireless telecommunications carriers. Dependence on pole attachments to deliver advanced services is growing, and inability to obtain timely access at legally required costs remains a constant challenge. Substantial benefits would be derived from providing clear guidance regarding

¹⁵ *National Cable Telecommunications Association v. Gulf Power*, 534 U.S. 327 (2002).

¹⁶ 47 C.F.R. § 1.1409(e)(2). To expedite pole attachment negotiations, the FCC established rebuttable presumptions for the numerical values. See, *Southern Company Services v. Federal Communications Commission*, 313 F.3d 574 (D.C. Cir. 2002).

¹⁷ *Omnipoint v. PECO Energy*, Memorandum Opinion and Order, 18 FCC Rcd 5484 (2003).

¹⁸ *Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers With Access To Utility Poles At Reasonable Rates*, "Public Notice DA 04-4046, released December 23, 2004.

¹⁹ *Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777(1998), paras 36-42.

measurement of usable space for purposes of applying the telecommunications formula to wireless attachments.

To eliminate this long-standing source of dispute, the Commission's rules should be amended to explicitly define a wireless telecommunications carrier as a telecommunications carrier for purposes of access rights and the pole attachment rate formula. The Commission's Rules should also be amended to include a specific formula to calculate the space factor for wireless attachments. In this respect, the new Utah pole attachment law also proves instructive.

Utah law defines a "wireless provider" as "[a] corporation, partnership, or firm that provides cellular, Personal Communications Systems (PCS)(sic), or other commercial mobile radio service as defined in 47 U.S.C. 332 that has been issued a covering license by the Federal Communications Commission."²⁰ "Usable space" is defined as "...the space on a utility pole above the minimum grade level to the top of the pole, which includes the space occupied by the pole owner,"²¹ thereby resolving the ongoing difficulties of wireless carriers with attaching at the top part of the pole.

For purposes of establishing and applying the rental rate formula, Utah established a rebuttable presumption for "space used by an attaching entity" that is specific to wireless: [a] wireless provider's pole attachment equals not less than 1.0 foot and shall be determined by the amount of space on the attachment or the associated equipment. The space used by a wireless provider may be established as an average and included in the pole owner's tariff and standard contract."²² Nonetheless, the space used by a wireless provider "may not include any of the length of a vertically placed cable, wire, conduit, antenna, or other facility unless the vertically

²⁰ *In the Matter of Pole Attachments of Public Utility Companies*, Docket No. 05-R345-01 (2005) ("Utah Order") at R746-345-2(H).

²¹ Utah Order, R746-345-5(a)(2)(d).

²² Utah Order, R746-345-5(a)(2)(e).

placed cable, wire, conduit, antenna, or other facility prevents another attaching entity from placing a pole attachment in the usable space of the pole." T-Mobile believes that federal adoption of Utah's rebuttable presumption for defining the space used by a wireless attachment in the context of applying the telecommunications rate formula would lend clarity and expedite enforcement actions.

IV. PRESUMPTIONS SHOULD BE CREATED TO ENSURE TIMELY, EFFICIENT AND COST-EFFECTIVE ACCESS TO POLES AND CONDUITS

T-Mobile agrees with those commenters who believe that changes in the current pole attachment rules are essential to creating an effective enforcement and remediation process.²³ Today, on average, the Enforcement Bureau requires a little more than a year from the date a complaint is filed to resolve a pole attachment dispute. The reality is that if relief is not granted in six months or less, the practical value of the enforcement regime is undermined.²⁴ Potential customers are eager to receive new or enhanced services. As the Petition suggests, complementing the current pole attachment rules with appropriate presumptions should provide the necessary guidance to deter certain utility conduct and expedite resolution of complaints that are filed.

A. Timely Access to Poles Through Transparent Processes Must Become The Norm.

T-Mobile has substantial experience throughout the country in negotiating pole attachment agreements, primarily with electric utilities. In many of these instances, T-Mobile has neither received nor affirmatively been denied access within 45 days of requesting access, as required by Commission rules. Consistent with Next G Networks' experience, utilities do not readily provide T-Mobile with even a basic application because of a general absence of "wireless

²³ See, Comments of Comptel; segTel, Inc; McLeod USA Telecommunications Services; Sigecom, LLC; Synesys, Inc; Indiana Fiber Works, LLC; Tropos Networks; Next G Networks, Inc.; and Virtual Hipster.

²⁴ See, e.g., Comments of Sunesys, Inc. at 9-13.

attachment agreements" and an unwillingness to use the standard telecommunications pole attachment application.²⁵ T-Mobile has, as opponents of the Petition recommend, used the FCC's existing complaint processes, but relief is so long in coming that in the interim, T-Mobile was compelled to make other arrangements to meet competitive milestones.

For example, it has been almost two years since T-Mobile first contacted Florida Power and Light ("FPL") to request attachment, and T-Mobile is still waiting. FPL did not even provide T-Mobile a draft pole attachment agreement until late May 2005, an entire year after T-Mobile's request for access. Even that agreement, however, was deficient because it did not include basic terms and conditions of attachment, such as FPL's proposed rental rate, and did not contain all the exhibits needed for T-Mobile to complete an informed review of FPL's proposal. In addition, FPL has yet to provide T-Mobile with all the documents and forms needed for FPL to complete its initial review of T-Mobile's access request. Despite follow-up contacts, T-Mobile still has not been provided with either the rental rate or the missing exhibits and other documents. In fact, T-Mobile has not received a response from FPL to its follow-up contacts since November of 2005.

The record demonstrates that a generic access deadline together with a complaint process geared to detailed case-by-case review have not provided effective and efficient access to poles for competitive service providers. Additional guidelines to make the access process more transparent and realistic, and that could also serve as presumptions in the enforcement context, are necessary. First, each utility subject to the FCC's pole attachment rules should post on its public web site a complete pole attachment application and standard agreement compliant with applicable federal and state laws, together with comprehensive information describing the

²⁵ Comments of Next G Networks at 6.

process for seeking access. Utilities should be encouraged to develop standardized pole attachment agreements, as now required by the states of New York and Utah.

T-Mobile also believes that confusion regarding timing of the conditions precedent to access contributes to inaction by utilities. The "one-size-fits-all" approach of the 45-day deadline is, as several commenters observe, unrealistic²⁶: some pole attachment requests involve hundreds of poles while others involve a single pole. T-Mobile therefore agrees with comments that recommend combining the make-ready and survey stages into a single condition precedent to access. In addition, timing of access should, consistent with the comments of McLeod USA and Sigecom, be adjusted to take into account the number of poles covered by the request so that performance expectations are realistic. CMRS pole attachment requests involve the smallest number of poles. As a result, the deadline for CMRS access or denial should be 30 days from the date of request, the earliest of the range of deadlines proposed by the Petition.²⁷

B. All Utility Fees for Make-Ready Work, Surveys and Other Functions Should Be Cost-Based, and Documented in an Invoice Prior to Commencing Work.

T-Mobile has found that utilities exact a number of charges as part of the pole attachment process that are largely unexplained. The Petition documents charges for make-ready work, surveys, utility personnel supervision, and other charges that are not tied to specific costs incurred by the utility.²⁸ Further adding to undocumented costs and risks of attachment are such onerous terms and conditions as one-sided indemnification clauses.

Utah's new pole attachment law went into effect on February 8, 2006, and represents an effective model for addressing the issue of questionable utility charges. Specifically, the pole owner is required, as part of the application process, to provide the applicant with an estimate of

²⁶ See, e.g., Comments of Sigecom, LLC, McLeod USA Telecommunications Services and segTel, Inc.

²⁷ Petition at 16-18.

²⁸ Petition at 30; Comment of Indiana Fiberworks, LLC at 3-6; Comments of segTel, Inc. at 9-12; Comments of Sigecom, LLC at 7-8 and Comments of Sunesys, Inc. at 5-8.

the cost of make-ready work and the expected time for completion, consistent with the legally prescribed deadline for the particular number of poles involved. For all approved applications, the applicant can either accept or reject the make-ready estimate and construction time-line. If the applicant accepts, the pole owner must perform the work on schedule for the quoted price, with applicants required to pay 50% of the cost estimate in advance of construction, an additional 25% when half of the construction is done, and the balance after all the work is completed. The applicant also has the option of rejecting the make-ready estimate and schedule, and selecting an approved contractor to perform the work. All work performed by the approved contractor would be subject to the pole owner's inspection and at the applicant's sole expense²⁹

C. Each Utility Must Publicly Maintain a List of at Least Three Approved Contractors That Can Be Hired by Telecommunications or Cable Service Providers to Perform Make-Ready and Survey Work.

The electric utilities contend that they have limited resources to devote to filling pole attachment requests, and balk at the use of third-party contractors to perform surveys and make-ready work, citing critical infrastructure surety as well as homeland security concerns.³⁰ T-Mobile and other proponents of the Petition agree that safety and full compliance with applicable state laws, including the National Electric Standard Code ("NESC"), take priority in all work done involving the local distribution grid.³¹ If utilities are lacking resources to timely meet requests for access, then use of approved and/or accredited third-party contractors is the only solution.

²⁹ Utah Order , R746-345-3(C)(5)-(8).

³⁰ See, generally, Joint Comments of UTC/Edison Institute; Ameren Corporation/Florida Power and Light Company/Pacificorp/Public Service electric and Gas Company/Southern California Edison Company/Tampa Electric Company/Virginia Electric and Power Company; and American Electric power Service Corporation/Duke Energy Corporation/Wisconsin Electric Power Company/WPS Resources Corporation and Xcel Energy Inc.

³¹ See, e.g., Comments of Sunesys, Inc. at 5-8.

National policy is clear that our telecommunications and information technology infrastructure is the most critical of all because it interconnects all other infrastructures, including those used for electric generation.³² The public should not be put in the position of having to choose between optimization of one critical infrastructure sector at the cost of another. Safety concerns associated with make-ready and survey work are not subjective determinations. Approved and/or accredited contractors would adhere to the applicable safety rules no differently than the utility's own workers, so it is irrelevant whether the contractor is paid by the utility or the telecommunications service provider. Apart from the utility's ability to select the three contractors, the utility also retains the right to supervise contractors and inspect their work. Safety concerns are objective, and cannot be invoked in a discriminatory manner.

V. CONCLUSION

For the reasons stated herein, T-Mobile supports grant of the Petition, and urges the Commission to initiate a rulemaking proceeding to revise its pole attachment regime.

Respectfully submitted,

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³² See, generally, *The National Strategy to Secure Cyberspace* and *The National Strategy for the Physical Protection of Critical Infrastructures and Assets*, the National Infrastructure Advisory Council.

CERTIFICATE OF SERVICE

I, Sharon Potter, hereby certify that copies of the foregoing Reply of T-Mobile USA, Inc. were sent on March 1, 2006, via first-class mail, postage prepaid, to the following:

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